

A RESOLUTION BY

PUBLIC SAFETY & LEGAL ADMINISTRATION COMMITTEE

AUTHORIZING THE SETTLEMENT OF A CLAIM; AUTHORIZING THE MAYOR TO EXECUTE AN ASSUMPTION AND RELEASE AGREEMENT WITH AARON TURPEAU, HANK AARON, DR. GERALD HOOD AND DR. DIANE CHAUFFE, ON BEHALF OF THE CITY OF ATLANTA, IN THE AMOUNT OF \$543,150; TO FUND THE COSTS OF REMEDIATING EROSION OCCURRING AT THE RESIDENTIAL PROPERTIES OWNED BY THOSE INDIVIDUALS, WHICH THREATENS TO DRAIN A LAKE AROUND WHICH THE RESIDENCES ARE BUILT FROM ACCOUNT NO. 1A01529017T31001, AND FOR OTHER PURPOSES.

RECITALS

WHEREAS, Aaron Turpeau, Hank Aaron, Dr. Gerald Hood and Dr. Diane Chauffe ("Owners") own residential properties (the "Properties") located on a lake in the City of Atlanta;

WHEREAS, a stream channel runs along the lake and is located 10 to 15 feet from the lake, creating a dike between the lake and stream channel;

WHEREAS, Owners contend that flows of water within the stream channel have eroded its banks and compromised the natural dike;

WHEREAS, Owners contend that, if this erosion continues, the dike will be breached and the water in the lake drained by flowing out through the stream channel;

WHEREAS, City holds a drainage easement for the stream channel granted to it by Owners in 1974-75;

WHEREAS, City previously replaced existing culverts and installed new 60" culverts within the stream channel near the dike and also installed gabions and reno mattresses;

WHEREAS, after that, Owners contended that City did not extend its repair efforts far enough upstream to prevent future erosion from breaching the dike and draining the lake;

WHEREAS, accordingly, after the culvert construction, Owners asserted that continued erosion occurred and further threatened the lake's existence;

WHEREAS, in an effort to further curb the erosion after the culvert construction, City installed rip-rap on approximately 1/10 of the length of the stream channel; this measure is alleged by Owners to have been ineffective in that, to this date, erosion and the threat to the lake's existence continues;

WHEREAS, Owners retained Schnabel Engineering to further analyze the erosion issues, which issued an analysis of the erosion problem and a proposed remediation as a solution to the problem;

WHEREAS, Owners have proposed to City that Owners assume all obligations concerning the remediation (including finalizing any remediation design and procuring a firm or firms to construct the remediation) and that City fund all design, construction and other costs associated with the remediation;

WHEREAS, the engineering cost estimates for the Remediation total \$543,150;

WHEREAS, owners filed a tort claim (nuisance) against the City of Atlanta seeking monetary compensation for the damage allegedly sustained to their properties and the lake as a direct result of the actions of the City of Atlanta; and

WHEREAS, the City of Atlanta was on notice of the nuisance and yet the City failed to abate said nuisance; and

WHEREAS, inasmuch as the facts disclosed indicate that the Owner's claim is not based on a claim of negligence, but is a nuisance which is not subject to a defense of sovereign immunity under the laws of the State of Georgia; and

WHEREAS, City Attorney has determined that it is desirable and in the City's best interests to enter into an Assumption and Release Agreement with Owners which provides City will fund the remediation, subject to the not to exceed amount of \$543,150, on condition that Owners assume all responsibility for implementing the remediation and release City from all claims and liabilities concerning the erosion and remediation;

NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor is authorized to enter into an Assumption and Release Agreement with Aaron Turpeau, Hank Aaron, Dr. Gerald Hood And Dr. Diane Chauffe, in the aggregate amount of \$543,150; for the purpose of remediating the Lake's erosion and drainage problems.

IT IS FURTHER RESOLVED, that the cost to City under the Assumption and Release Agreement will be paid from Account No. 1A01529017T31001.

IT IS FURTHER RESOLVED, that the City Attorney is directed to prepare an Assumption and Release Agreement for execution by the Mayor, to be approved by the City Attorney as to form.

IT IS FURTHER RESOLVED, that the Assumption and Release Agreement will not become binding upon City and City will incur no liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, and delivered to Owners.